

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GENESIS ATTACHMENTS, LLC,

Plaintiff/Counter-Defendant,

Case No. 19-cv-11266
Hon. Matthew F. Leitman

v.

DETROIT EDGE TOOL COMPANY,

Defendant/Counter-Plaintiff.

ORDER APPOINTING SPECIAL MASTER

This is a patent infringement action. The Court has advised the parties that it would benefit from the appointment of a Special Master to efficiently address (1) disputes over claim construction, (2) discovery disputes, and (3) scheduling matters. The parties then jointly requested that the Court appoint Mr. Eric Dobrusin, 29 W. Lawrence Street, Suite 210, Pontiac, Michigan 48342, as the Special Master for these phases of the litigation.

Mr. Dobrusin is the founding shareholder of the Dobrusin Law Firm, and he has extensive experience in patent law. He received a Bachelor of Science degree in materials and metallurgical engineering from the University of Michigan School of Engineering in 1985, and a Juris Doctor degree from Wayne State University in 1988. He has substantial litigation experience and has received numerous honors related to his work in patent law. He also has been appointed and served in United

States District Court patent litigation as a Special Master, and he has served as an independent neutral for multiple alternative dispute resolution proceedings related to patent law. Finally, Mr. Dobrusin is the Executive Director of the National Patent Board, an alternative dispute resolution organization. Mr. Dobrusin is well positioned to “effectively and *timely* address” the patent and discovery portions of this action, and the Court is not. *See Fed.R.Civ.P. 53(a)(1)(C)* (emphasis added) (authorizing district court to refer any pretrial matter to a special master where the matter “cannot be effectively and timely handled by an available district judge or magistrate judge of the district”).

Through this Order, the Court appoints Mr. Dobrusin as Special Master. The Court makes this appointment pursuant to Federal Rule of Civil Procedure 53 (“Rule 53”), and the appointment is limited to empowering Mr. Dobrusin to hold a claim construction hearing, to receive evidence on claim construction issues consistent with the evidence the parties submitted with their *Markman* submissions, to file a Rule 53 report and recommendation with the Court on the correct construction and/or definiteness of the patent claim terms at issue in this case, to address discovery disputes that may arise between the parties, to file Rule 53 report and recommendations with respect to any such discovery disputes, and finally, to file a Rule 53 report and recommendation with the Court with respect to scheduling matters.

More specifically, **IT IS HEREBY ORDERED** that:

1. Mr. Dobrusin shall convene a conference with the parties to discuss the entry of a scheduling order and claim construction proceedings. Following consultation with the parties, Mr. Dobrusin shall recommend a proposed scheduling order to the Court. He shall also set a schedule for submitting claim construction briefs and shall instruct the parties on the length and format of these briefs. If, following the submission of the parties' initial claim construction briefs, Mr. Dobrusin determines that additional briefing is necessary, he shall confer with the parties to arrange a schedule for such additional briefing.

2. Mr. Dobrusin may, at his discretion, hold a claim construction hearing where he may hear oral argument on claim construction issues and receive evidence. Mr. Dobrusin shall determine the procedure (*i.e.*, hearing format) employed at the hearing at his discretion.

4. At this hearing, a court reporter shall be engaged so that an adequate record can be generated. If Mr. Dobrusin determines that oral testimony is necessary during the claim construction hearing, the testimony shall be taken under oath. Mr. Dobrusin shall conduct the hearing in Flint, Michigan, in Judge Leitman's courtroom unless Mr. Dobrusin and the parties agree on an alternative location.

5. Mr. Dobrusin shall prepare a report and recommendation for the Court on the correct construction and/or definiteness of the patent claim terms in dispute. Mr.

Dobrusin shall proceed with all reasonable diligence and shall have the rights, powers, and duties provided in Rule 53, as limited by this Order. Mr. Dobrusin shall file his report and recommendation (and all other evidence discussed *infra*) with the Court. Mr. Dobrusin shall file any privileged and/or confidential information under seal.

6. Mr. Dobrusin shall also address any discovery disputes that arise between the parties. If a discovery dispute arises, Mr. Dobrusin shall first hold a telephonic status conference with the parties in an effort to resolve the dispute. If the dispute cannot be resolved, Mr. Dobrusin shall set a schedule for the filing of a discovery motion and shall instruct the parties on the length and format of these motions and briefs. The parties shall thereafter file their discovery motion and briefs with Mr. Dobrusin and with the Clerk of the Court. If, following the submission of the parties' discovery papers, Mr. Dobrusin determines that additional briefing is necessary, he shall confer with the parties to arrange a schedule for such additional briefing. Mr. Dobrusin may, at his discretion, hold a hearing on the parties' discovery disputes. At any such hearing, a court reporter shall be engaged so that an adequate record can be generated. Mr. Dobrusin shall conduct any such hearing in Flint, Michigan, in Judge Leitman's courtroom unless Mr. Dobrusin and the parties agree on an alternative location. Mr. Dobrusin shall then prepare a report and recommendation for the Court that proposes a resolution of the filed discovery motion. Mr. Dobrusin

shall proceed with all reasonable diligence and shall have the rights, powers, and duties provided in Rule 53, as limited by this order. Mr. Dobrusin shall file his report and recommendation with the Court upon its completion. Mr. Dobrusin shall file any privileged and/or confidential information under seal.

7. During the term of appointment, Mr. Dobrusin shall preserve any records necessary for the Court's review of any orders, reports, or recommendations made during the course of his assignment. All evidence Mr. Dobrusin considers in preparing his report should be recorded, preserved, and filed with the Court.

8. Copies of papers filed with Mr. Dobrusin shall also be filed simultaneously with the Clerk of the Court and served pursuant to applicable federal rules. In addition, a hard copy shall be delivered to the chambers of Judge Matthew Leitman. Forwarding letters or informal communications need not be filed but should be served on the other parties.

9. Mr. Dobrusin shall not communicate *ex parte* with the individual parties. Any documents exchanged between Mr. Dobrusin and the Court shall also be timely served on the parties.

10. Mr. Dobrusin may communicate with the Court *ex parte* on procedural matters.

11. The Court's review of any report and recommendation that Mr. Dobrusin prepares shall be governed by Federal Rule of Civil Procedure 53(f). Specifically,

the parties may file objections to—or a motion to adopt or modify—Mr. Dobrusin’s report and recommendation(s) no later than twenty-one (21) days after a copy is served. The objections may not exceed 25 pages. The parties may file a response to the other party’s objections no later than fifteen (15) days, which shall not exceed 20 pages.

12. Mr. Dobrusin may use a law clerk or paralegal at his discretion, and Mr. Dobrusin shall keep detailed records of his time and expenses. Mr. Dobrusin shall render detailed timely bills for all fees and expenses at the rate of \$450.00 per hour, which is his normal hourly rate for his services, and such bills shall be paid promptly as follows: fifty percent (50%) by Plaintiff and fifty percent (50%) by Defendant. These monthly bills shall be submitted directly to counsel for the parties who shall take responsibility for prompt payment by their respective clients.

IT IS SO ORDERED.

Dated: July 29, 2019

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on July 29, 2019, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(810) 341-9764